

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 16936 of 2004

Between:

V. Ramaswamy S/o. Lingiah
Toody Cooperative Society Limited, Group No.3, 9-6-37, Mankamma Thota,
Karimngar District, Karimnagar.

..... PETITIONER

AND

Prohibition and Excise superintendent, karimnagar District, Karimnagar.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or a direction, more particularly one in the nature of writ of Mandamus, declaring the proceedings Rc.No.1373/2004/P & EX/A11, Dt. 8.9.2004 issued by the Prohibition and Excise Superintendnet, Karimnagar, as being arbitrary, illegal, unconstitutional, and violative of principles of natural justice, apart from being in gross vioaltion of provisio to section 31(1) of the A.P. Excise Act and consequently set aside the same and pass.

Counsel for the Petitioner: MR.D.BHASKAR REDDY

Counsel for the Respondent: GP FOR PROHIBITION & EXCISE

The Court made the following :

ORDER:

The petitioner claims to be the President of the Toddy Cooperative Society Limited, Group No.3, Mankamma Thota, Karimnagar District, which is holding a licence for sale of toddy.

This writ petition is filed aggrieved by the order passed by the Prohibition and Excise, Superintendent, Karimnagar District, dated 08.09.2004, where under the licence of the petitioner-society has been suspended with immediate effect pending enquiry.

I have heard the learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise appearing for the respondents.

A perusal of the impugned order, dated 08.09.2004, shows that the State Task Force, Hyderabad party inspected the Toddy Depot No.3, Karimnagar, and conducted spot test of toddy, which revealed that the toddy was adulterated with Chloral Hydrate. It further shows that three samples of toddy have been drawn under the cover of panchanama for chemical analysis under Rule 5 of A.P.Excise (Tapping of Trees and Toddy Shops Special Conditions of Licence)

Rules, 1969 (for short 'the Rules'). The Station House Officer, Karimnagar P.S. registered a case vide Crime No.236/2004-05, dated 04.09.2004 against the petitioner-society and samples were sent to Chemical Examiner, Warangal, for analysis. That apart, while observing that the licensee has contravened the Rules by indulging in adulteration of toddy with Chloral Hydrate, which is injurious to public health and therefore, keeping in view the interest of public health and safety and with a view to restrain the licensee from indulging such practice, the licence of the petitioner-society has been suspended for contravention of the licence conditions under Section 31(b) and 31(2) of A.P.Excise Act,1968 (for short 'the Act'), with immediate effect pending enquiry.

The correctness of the said order has been assailed in this writ petition, mainly on the ground that such order, which was passed without affording an opportunity to the petitioner to rebut the allegations, is arbitrary and illegal and in violation of the principles of natural justice.

Learned counsel for the petitioner while relying upon the Proviso to Section 31(1) of the Act, contends that no licence or permit shall be cancelled or suspended unless the holder thereof is given an opportunity of making his representation against the action proposed.

I am unable to agree with the said contention, since Section 31 of the Act deals with cancellation or suspension of the licence by way of substantive punishment, but not the suspension of the licence as an interim measure pending enquiry into the allegations against the licensee. In the circumstances, I am of the view that the impugned order cannot be held to be bad for want of prior notice.

Learned counsel for the petitioner in support of his contention has placed reliance upon a decision of this Court in SREEDEVI WINES Vs. DEPUTY COMMISSIONER OF EXCISE, KAKINDA & OTHERS in which a learned Single Judge of this Court held that:

“When the authority passing order of suspension on the ground of violation of conditions of licence, has concluded about the violation of the conditions, without affording an opportunity to the petitioner, the order held to be bad, being in

violation of Section 31 of the Act.”

The ratio laid down by the learned Judge in the above decision cannot be applied to the facts and circumstances of the case on hand. In the present case, spot test has revealed that the toddy available in the licensed premises was adulterated with Chloral Hydrate. In the circumstances, undoubtedly, a *prima facie* case as to the adulteration of the toddy with Chloral Hydrate is made out. On the basis of the spot test since it was found that the licensee is indulging in adulteration of toddy with Chloral Hydrate, the consumption of which is injurious to public health, the respondents thought it fit to take immediate preventive action to stop the sales to the consumers so as to avoid further injury to public health and to conduct enquiry. In the circumstances, there is absolutely no reason to hold that the authority has predetermined the issue. Hence, the above decision is not of any assistance.

Learned counsel for the petitioner also relied upon a decision of a Division Bench of this Court in K.SRINIVASA REDDY Vs. SUPERINTENDENT, PROHIBITION AND EXCISE. The said decision is also clearly distinguishable on facts, since in the said case the Division Bench found that the order impugned reads as if it is a final order under Section 31(1) of the Act and therefore, held it was illegal since the licensee was not issued a prior notice. It is to be noted that the scope of Section 31 of the Act has been considered by a Full Bench of this Court in TAPPERS CO-OPERATIVE SOCIETY, MADDUR Vs. SUPERINTENDENT OF EXCISE, wherein it has been held that the power to suspend the licence pending enquiry is inherent and that the principles of natural justice need not be complied with unless the order is in the nature of a penalty or final order.

In the light of the settled legal position, I do not find any substance in the contentions raised by the petitioner. Having regard to the facts and circumstances of the case and particularly keeping in view the nature of the allegation that the toddy found in the premises of the petitioner-society is adulterated with Chloral Hydrate, I am of the view that the respondent is justified in suspending the licence pending enquiry.

In the circumstances, I do not see any merit in the writ petition and accordingly, the same is dismissed. However, it is made clear that the

respondent while proceeding with the enquiry shall afford due opportunity to the petitioner to rebut the allegations and pass appropriate orders in accordance with law without being influenced by any observations made in this order. No costs.

21-09-2004

klp

To

1. The Prohibition and Excise superintendent, karimnagar District, Karimnagar.

2 2CCs to G.P. for Prohibition and Excise, High Court buildings,
Hyderabad.(OUT).

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